

# COUNTY OF LINCOLN

## New Mexico Regular Meeting Board of County Commissioners

Jackie Powell, Chair  
Preston Stone, Vice Chair

Kathryn Minter, Member  
Mark Doth, Member  
Dallas Draper, Member

### Minutes Wednesday, November 19, 2014

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on November 19, 2014 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

Chair Powell called the Regular Meeting of the Board of County Commissioners to order at 8:20:40 AM.

#### 2. Roll Call

##### Roll Call.

**Present:** Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

#### 3. Invocation

The invocation was presented by Barbara Buttram.

#### 4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary,

**Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Chair Powell.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

#### 6. Approval of Minutes

- a. October 21, 2014 Regular Commission Meeting
- b. November 7, 2014 Special Commission Meeting

**Motion:** Approve the minutes of the October 21, 2014 Regular Commission Meeting and November 7, 2014 Special Commission Meeting; **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/Expenditures
- b. Treasurer's Financial Report for the Month ending September 30, 2014

**Motion:** Approval of Consent items as presented, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**SEE EXHIBIT A:** Copies of Consent Items are attached hereto in reference thereto made a part hereof.

#### **8. Smokey Bear District Ranger Update**

George Douds, Acting District Ranger discussed the administrative process associated with the Supplemental Draft Environmental Impact Statement (SDEIS) for the North Fork Eagle Creek Wells Special Use Authorization Project. Acting Ranger Douds reminded the 2012 Draft Environmental Impact Statement (DEIS) for the North Fork Eagle Creek Special Use Permit required revision due to changes in resource conditions and the environmental effects of the Little Bear Wildfire. Acting Ranger Douds stated the Notice of Availability published November 14, 2014 began a 45 day comment period during which stakeholders could submit written comments.

Acting Ranger Douds stated the District was currently analyzing a proposal from El Capitan Precious Metals, Inc to issue a special use permit for access to the private land site by use of Forest Road 489A. Acting Ranger Douds expected a decision on this proposal to be issued by the end of the week.

Commissioner Stone questioned whether El Capitan Mine paid a usage fee for access on Forest Road 489A. Christine Thompson of the Smokey Bear Ranger District reported El Capitan paid a minimal annual land use fee for utilization of the road.

#### **9. Lincoln County Detention Center Update**

Ms. Taylor provided copy of Warden Arthur Anderson's report of monthly statistics on bookings and releases at the Lincoln County Detention Center. Warden Anderson's report detailed the Detention Center average total daily population as 137 with a current population of prisoners of 130 which included 14 BIA prisoners and no US Marshal prisoners. Warden Anderson stated the current population was composed of 26 female and 104 male prisoners.

#### **13. FEMA Funding Agreement for Declaration 4197 and 4199 – Alternate Procedures Pilot Program**

Ms. Taylor reminded there were two separate federal disaster declarations by FEMA for flooding events which occurred this past summer between July and September. Ms. Taylor stated as a result of these declarations, County representatives met with FEMA to identify flood damage in Lincoln County. Ms. Taylor stated the County working with FEMA developed a total estimate of damages \$4,008,888. Ms. Taylor stated FEMA would reimburse 75% of the total cost, the State of New Mexico would provide 12.5% of the funding, with the County responsible for the remainder of 12.5% or approximately \$500,000. Ms. Taylor reminded the County could meet the required match with in kind contributions.

Ms. Taylor discussed the difference between the FEMA "conventional" funding programs which require individual worksheets for each action versus the new pilot "alternative" program which allow the combination of multiple projects into one worksheet providing for more efficient administrative procedures.

Carl Palmer, Road Superintendent stated the Road Department identified several additional projects not included on the original project list for flood damage associated with the Disaster Declaration. Mr. Palmer stated and Justin King were working to update the FEMA project worksheet to reflect those additional projects. Mr. Palmer discussed various actions and options for the County to track and claim work as "in kind" services.

Commissioner Doth requested clarification as to whether the Board of Commissioner had the option to choose under which program to submit projects for funding. Commissioner Doth stated understanding the "conventional" program provided a mechanism to reimburse for cost overruns. Ms. Taylor confirmed this was correct but noted the "alternate" program allowed flexibility to utilize any funds remaining after projects were completed for other qualified projects.

Commissioner Draper questioned if the repair of various bridges in the County might qualify for any remaining funding. Mr. Palmer stated funds remaining after identified projects were complete were for infrastructure projects which included bridges.

**Motion:** Direct the Manager to enter into an agreement with FEMA to accept FEMA funding under the guidelines of the new Alternative Procedure Pilot Program, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**11. 9:00 A.M.: Consideration / Action on Lodger's Tax Application:**

- a. Application 1722: Funding Request: \$5,000  
Purpose: Ruidoso Visitor Guide  
Date(s) of Event: 2014 Guide  
Presenter: Lajuana Martinez, Adventure Marketing, Ltd. Co.

**Motion:** Approve Application 1722 for \$5,000, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**14. Approval of Required 2015 Operational Resolutions:**

- a. Resolution 2014-23 – Establishing 2015 Regular Commission Meetings
- b. Resolution 2014-25 - Establishing 2015 County Official Holiday Calendar
- c. Resolution 2014-26 - Open Meetings Act
- d. Other 2015 Committee Meetings – Planning Commission, Lincoln Historic Preservation Board and Lodger's Tax Committee

Ms. Taylor presented the three required "operational" Resolutions along with other commission or committee meeting schedules for approval and subsequent publication.

**Motion:** Adopt Resolution 2014-23, Resolution 2014-25, and Resolution 2014-26; and Approve the schedule of other 2015 Committee Meetings for publication with a correction to reflect the requirement for a 72 hour notice to the public, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**SEE EXHIBIT B:** Copies of Resolution 2014-23; Resolution 2014-25; and Resolution 2014-26 are attached hereto in reference thereto made a part hereof.

**15. Resolution 2014-27 Requesting Congress to Provide FY 2015 PILT Funding**

Ms. Taylor reminded the Payment in Lieu of Taxes funding from the federal government required Congressional authorization and noted the US Congress had not yet authorized PILT funding for 2015. Ms. Taylor stated the 2014 PILT payment was \$1,691,372. Ms. Taylor also provided copy of a National Association of Counties (NACo) news release requesting county support for swift passage of legislation to extend mandatory PILT funding. Ms. Taylor read the proposed Resolution of support for full funding of PILT and for passage of long term sustainable legislation.

**Motion:** Adopt Resolution 2014-2, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Stone.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

Chair Powell requested copy of the Resolution be forwarded to the New Mexico congressional delegation.

**Motion:** Approve the issuance of a news release by NACo on behalf of Lincoln County in support of PILT funding, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

Commissioner Doth requested the percentage of total acreage of federal and state land within the County be verified and updated. Commissioner Doth suggested the verified total percentage of public lands within Lincoln County might play a role in various funding algorithms.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**SEE EXHIBIT C:** Copy of Resolution 2014-27 is attached hereto in reference thereto made a part hereof.

#### **10. El Capitan Mine Update**

Nita Taylor, County Manager reminded of the discussion at the September 16, 2014 Regular Meeting regarding notification by El Capitan Precious Metals, Inc. (El Capitan Mine) of the company's intent to apply to the NM Environmental Department for an air quality permit for the construction of an iron ore crushing and sizing facility. Ms. Taylor provided copy of the minutes reflecting a request by resident Lee Arnone for enforcement of Lincoln County Ordinance 2009-01 and a copy of the Ordinance for review.

Chris Eustice, Senior Environmental Engineer for the Mining and Minerals Division (MMD) of the State of New Mexico Energy, Minerals and Natural Resource Department (EMNRD) informed a permit was issued by MMD for the El Capitan Mine in 1999. Mr. Eustice stated since that time the mine remained mostly inactive until MMD received notice in 2012 of El Capitan's intent to reactivate the mine. Mr. Eustice stated MMD requested an update of the operations and reclamation plan at that time. Mr. Eustice stated the operator provided updates to the operational plan but the current application was pending provision of the financial assurance for reclamation.

Mr. Eustice discussed the process to review the updated application and to seek and receive comments from other cooperating agencies such as the USFS and other State Agencies. Mr. Eustice stated while MMD was aware of Lincoln County's Mining Ordinance no Memorandum of Understanding (MOU) existed which designated the County as a co-operating agency. Mr. Eustice suggested the County submit a request to be on the MMD "interested parties list" to receive written notice in the future of all applications submitted to MMD. Mr. Eustice conducted a site visit of the El Capitan Mine in June of 2014 and the operator was in full compliance with the MMD permit at that time.

Attorney Morel questioned the distinction between the permit issued in 1999 and the current permit under review.

Mr. Eustice stated the 1999 permit was issued under a minimal impact status while the updated operations plan for the new permit reflected additional operations on site such as separation of materials. Mr. Eustice also informed MMD increased reclamation plan requirements since issuing the 1999 permit. Mr. Eustice discussed the operations plan submitted by El Capitan Mine and stated any additional changes to the plan required notification to MMD and a potential review of the permit.

Commissioner Minter questioned the nature of the permit as permanent or subject to review. Mr. Eustice stated MMD had the discretion to review any permit every five years but the permit had no specific expiration date.

Commissioner Stone questioned if MMD regulations required a permit to be retired if a site was inactive for a period of time. Mr. Eustice stated there was no regulation related to a "stand by" status but reminded onsite inspections were conducted minimally every year and often every six months. Commissioner Stone questioned if the operations plan for the 1999 permit was only for removal of iron ore, was this the only mineral the operator could remove. Mr. Eustice stated a permit only required review and modification if a significant change to the operations plan occurred.

Blair Dunn, Attorney representing El Capitan Mine reiterated the El Capitan Mine was permitted in 1999 and stated there were currently no plans to expand the "footprint" or permitted area of the mine's operations as defined in 1999. Mr. Dunn stated these facts qualified the mine as an "existing operation" as defined by Ordinance 2009-01 and therefore not subject at this time to the Ordinance requirements. Mr. Dunn discussed the issue of access to the mine via a US Forest Service road and informed the USFS agreed to issue a five year special use permit for access to the site.

Chuck Gerke, Operations Supervisor at the El Capitan Mine described the equipment and plans to ship non-iron ore material daily overseas for extraction of gold. Mr. Gerke anticipated minimal water usage primarily for dust control. Mr. Gerke stated his company conducted a similar operation in Otero County with minimal impact to the site and in cooperation with the County. Commissioner Ronnie Reardon of Otero County stated Otero County's relationship with the company was a positive one.

Commissioner Draper questioned plans to protect a nearby historical site. Mr. Gerke stated he was unaware of the historic site but reminded operations were limited to the permitted area. Mr. Eustice stated the Department of Cultural Affairs provided comment during the permit review process regarding the historic site near the mine.

Commissioner Stone questioned if there were any plans for blasting on the site. Mr. Gerke stated there were no plans for blasting at this time. Commissioner Stone expressed concerns about the effect of heavy truck traffic on State Highway 246 into Capitan. Commissioner Stone expressed concern about the company's history of a lack of communication with local residents and with the Village of Capitan. Mr. Dunn expressed a desire to improve public relations and offered to serve as liaison for questions or comments.

Rich Gross, resident from the area north of Capitan expressed concern about the lack of oversight of previous actions by the company such as illegal drilling and creation of roads.

Chair Powell discuss past action by the USFS to file a restraining order to stop the taking of core samples without prior permission. Chair Powell reminded current operations by El Capitan Mine were on private property only.

Heidi Payne resident on Fort Lone Tree Road expressed concern about the impact of heavy truck travel such as noise pollution and dust. Ms. Payne also expressed concern about the potential impact to private property values near the mine site.

Mr. Dunn stated he would contact the Mayor of Capitan on behalf of the El Capitan Mine to schedule a community meeting.

## **12. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS**

Chair Powell requested a proclamation be prepared to acknowledge the success of local high school athletic teams. Chair Powell also suggested the County adopt a proclamation acknowledging current accomplishments of Taos Muncy from Corona.

Justin King of King Industries commented on the earlier discussion regarding the FEMA "alternate" funding process as being less burdensome administratively. Mr. King also noted the cost estimates submitted to FEMA for repair of flood damage were based on contract prices. Mr. King advocated for the use of local contractors for repairs as less burdensome to the County Road Department.

Commissioner Stone questioned if the County could utilize any funding remaining after identified repairs were completed on other projects such as bridges. Mr. King confirmed there were multiple options to utilize any funds remaining after initial projects were completed.

Commissioner Stone requested Mr. King review and provide an opinion on the use of a new product for treatment of dirt roads. Mr. King stated another County was currently utilizing the product and agreed to provide additional information on the product in the future.

Sheriff Robert Shepperd stated in 1979 Deputy Thomas C. Bedford, Jr. was killed in the line of duty and in 1983 the County substation in Ruidoso was named in his honor. Sheriff Shepperd stated a desire to transfer this honor to the new addition of the Sheriff's office at the Courthouse as the substation was no longer utilized by the Sheriff's department. Sheriff Shepperd stated he would seek approval from the deputy's family prior to making the change.

## **16. Lincoln County Medical Center Matters**

### **a. 3<sup>rd</sup> Amended Lease Agreement**

Attorney Morel discussed the current lease with Presbyterian which requires an annual review of the lease payment. Attorney Morel stated the Manager's recommendation was to renew the lease at the current rate of \$1,100,000 annually.

Attorney Morel detailed additional revisions to lease language to reflect the changes in the Sole Community Provider program and to address the County's purchase of property adjacent to the Professional Office Building. Attorney Morel suggested additional revisions related to any request for or use of Mill levy funding. Attorney Morel requested the Board of Commissioners consider approval of the annual fee for the lease at this time and consider other revisions associated with a 3<sup>rd</sup> amended lease agreement at a later date.

**Motion:** Approve the renewal of the lease agreement with Presbyterian Healthcare Services for \$1,100,000 for a period of one year, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

b. NM Human Services Department Request for County Match for  
January – June, 2014 Payment to LCMC

Ms. Taylor provided copy of a letter received from the NM Human Services Department (HSD) requesting counties who did not make a Sole Community Provider (SCP) payment for the period of January to June of 2014 provide funding for this period under the old Sole Community Provider at this time. Ms. Taylor stated HSD was requesting \$193,503 from Lincoln County and noted if the County declined to provide the payment, HSD reserved the right to recoup payment in the amount of \$628,256.49 from Lincoln County Medical Center.

Ms. Taylor reminded LCMC requested and received additional financial support directly from the County in 2014 to cover a perceived "shortfall" in SCP funding for the period. Ms. Taylor stated at that time the County provided direct funding of \$550,000 in April and an additional \$550,000 in June of 2014. Ms. Taylor stated direct funding from the County and SCP payments to LCMC totaled \$1,728,256. Ms. Taylor stated as a result of this information she requested LCMC consider reimbursement to the County in the amount of \$193,503 so the County could provide the requested payment to HSD.

Ms. Taylor stated current options were 1) to submit payment to HSD in the amount of \$193,503 from the mill levy proceeds; 2) submit payment to HSD after receipt of reimbursement from LCMC for the same amount; or 3) should LCMC chose not to reimburse the County, submit notification to HSD the County will opt not to make the SCP payment based on the history of direct payment to LCMC.

**Motion:** Approve the SCP payment of \$193,503 to HSD pending reimbursement from LCMC or decline HSD's request for SCP payment should LCMC chose not to reimburse the County, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

17. Professional Services Agreement Melendres & Melendres

Ms. Taylor stated the County approved an agreement to hire the law firm of Melendres & Melendres to represent the County in litigation matters with Greentree Solid Waste Authority (GSWA) at the January 2014 Regular Meeting. Ms. Taylor stated the 2014 Professional Services Agreement with Melendres & Melendres had reached the statutory monetary limit of \$60,000 plus gross receipts tax. Ms. Taylor stated a new Professional Services Agreement was required to continue representation by Melendres and Melendres in the ongoing litigation with GSWA.

**Motion:** Renew the Professional Services Agreement with Melendres and Melendres for \$60,000 plus gross receipts tax, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

18. County Assets

a. Inventory Assets Annual Certification

Ms. Taylor stated NMSA 12-6-10 required each agency, including counties, to conduct a physical inventory of movable chattels and equipment costing more than five thousand dollars. Ms. Taylor



stated as County Manager she had supervised the annual inventory of fixed assets and presented the Certification for approval.

**Motion:** Approve the Annual Fixed Asset Inventory Certification, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

b. Auction County Assets on Public Surplus Website

Mickey Howard, Assets and Information provided a list of surplus items proposed for public auction. Ms. Howard noted the removal of one item from the list, a 1994 Ford pickup with removable snowplow. Ms. Howard stated the Ford pickup was transferred to the Planning Department for maintenance of the substation driveway.

**Motion:** Approve the items listed for public auction with the removal of the 1994 Ford pickup truck with plow, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Minter.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

Commissioner Minter, Commissioner Draper and Paul Baca, Assessor volunteered to review the items prior to sale.

**19. Consideration of Approval or Disapproval of Indigent Health Care Claims**

Scott Annala, IHC Administrator presented the Sole Community Provider/Safety Net Care Provider Pool claims for approval. Mr. Annala processed 26 claims with 26 recommended for approval and none recommended for disapproval for a monthly authorization of \$22,808.30. Mr. Annala stated the total approval for SCP/SNCP claims for Fiscal Year 2014-2015 to date was \$124,996 with a monthly average of \$24,999. Mr. Annala noted the payments were far less than prior years.

Mr. Annala presented the Indigent Health Care Payments request for the month and stated he processed 15 claims with 11 claims recommended for approval and 4 for disapproval for a total payment this month of \$4,735.63. Mr. Annala stated, pending approval, the total for IHC claims for Fiscal Year 2014-2015 to date was \$28,759 for an average monthly indigent claims payment of \$5,752.

**Motion:** Approval and denial of the claims as indicated for SCP/SNCP and Indigent Health Care as recommended, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**SEE EXHIBIT D:** Copies of the Sole Community Provider and Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

**20. Manager's Report**

- 1. Lincoln County Juvenile Justice Board.** The Manager reminded during the October Regular Commission meeting the County recognized Darrell Gasaway who retired as the Project Manager for the Lincoln County Juvenile Justice Board. Ms. Taylor stated Mr. Gasaway's replacement, Ted Allen, was currently working with Mr. Gasaway and would attend a future Commission meeting for introduction.
- 2. County Request for Investigation for Actions of Cibola National.** The Manager stated Attorney Morel notified the Cibola National Forest Mountainair Ranger District, of the Commission's dissatisfaction with the lack of responsiveness to requests for information. Attorney Morel requested copies of all information the Cibola District utilized to make the decisions to ban grazing by permittees. As a response, District Ranger Elaine Kohrman provided six compact disks containing hundreds of pages of publications most of which were not current and not specific to the area. Ms. Kohrman did not provide any correspondence relaying how the various principles in the publications provided were

utilized to make decisions to ban or modify grazing privileges on the Cibola National Forest in Lincoln County.

Commissioner Stone expressed disappointment with the Regional Supervisor's response to the request for documentation of scientific data related to the removal of nineteen permittees on the Cibola. Attorney Morel acknowledged the material provided was not supportive or relevant to the situation.

There was a general consensus for Chair Powell, Commissioner Stone, and Manager Taylor to schedule a meeting at the USFS Regional Supervisor's office and to request additional representation from the NM Congressional delegation.

### 3. Building / Project Updates:

- a) **Carrizozo Senior Center** The Manager stated a mandatory pre-bid meeting was held in Carrizozo on November 10, 2014 with a total of nine contractors attending. The Manager stated responses to the RFP were due today November 19, 2014 and anticipated an agenda item to award the contract at the December Commission meeting.
- b) **The Courthouse / Sheriff's Office Expansion is complete!** The Manager provided copy of the Certificate of Occupancy and requested direction on scheduling a Grand Opening.
- c) **The Ft. Stanton Fire Station is complete!** The Manager provided copy of the Certificate of Occupancy and anticipated receiving a recommendation for dates for a Grand Opening from Lincoln Fire Chief Bennie Long.
- d) **The moving of the Radio Antenna** on top of Sheriff's Complex to the ground location was currently in progress;
- e) **Roof Replacement and HVAC Unit Installation** on the Public Officials Building was scheduled to begin in the next week;
- f) **The Annex Building** was in the process of having specifics tests scheduled to determine whether and to what extent toxicity is present. The Manager stated once those determinations were concluded work could commence on necessary remediation.

There was general consensus to host a Grand Opening for the Courthouse/Sheriff's Office expansion on December 16, 2014.

- 4. **A Job Deserving Recognition:** The Manager reminded the construction of the Lincoln County Medical Center's Physician's Office Building was completed in November, 2013. The Manager stated Gordon Berch, Vice President of the architectural firm of Dekker/Perrich/Sabatini Firm had informed the County the building won a NAIOP (National Association of Industrial and Office Properties) Award.

### 5. Departmental Updates:

- a. Punkin Schlarb, Finance Director provided an email received from DFA expressing appreciation for the County's provision of information and noting the good collaborative relationship between the Financial Director and the Treasurer. Ms. Schlarb stated equipment and other preparations were in process for the new position of Solid Waste Billing Clerk.
- b. Carl Palmer, Road Superintendent discussed the potential need to delay projects due to recent cold temperatures. Mr. Palmer stated the Road Department may submit a request for extension of time to complete projects from the State for the utilization of Cap/Coop funds. Mr. Palmer reported the County received a donation of materials from the developers of Mesa Verde Subdivision for use on O Bar O Road.
- c. Renee Montes, Senior Program Director informed the process to revise reporting to the State for expenditures by service was nearing completion.
- d. Billie Jo Guevara, Human Resources reported the County participated in a two day wellness program providing an onsite wellness check up to employees and spouses on October 31, 2014. Ms. Guevara informed the Solid Waste Billing and Collection position was advertised and also posted to the County's website.
- e. Curt Temple, Planning Director stated the transfer of the 1994 Ford truck with snowplow would benefit the County's ability to maintain access to the Public Health Office next door to the County substation during winter weather. Mr. Temple stated Rural Addressing continued to replace damaged or stolen road signs throughout the County. Mr. Temple reported a draft map book for the County was in review and would go for publication in the near future. Mr. Temple stated Samantha Mendez, Ordinance Administrator received certification as a Zoning Officer through the Municipal League and was appointed as



district representative for this area. Mr. Temple stated inquiries related to development of a Well Capping Ordinance yielded the information that no State Agency has developed a draft Ordinance. Mr. Temple stated there seemed to be a consensus the topic was under the jurisdiction of the State Engineer and any Ordinance would present enforcement problems. Ms. Taylor suggested the County contact NMAC for additional guidance.

d. Joe Kenmore, OES reported on efforts for community outreach to provide correct addressing and Code Red sign ups. Mr. Kenmore stated Spencer Baldwin was obtaining certification as Certified Fire Instructor and Certified Fire Inspector. Mr. Kenmore discussed working with Acequia groups to identify potential FEMA projects. Mr. Kenmore discussed the associated costs for "pump" testing and stated Chief Carl Bartley of the Bonito Fire Department wrote a grant which was awarded by the State Fire Marshal for a pump test truck to facilitate completion of this requirement in the County.

Chair Powell recessed the Regular Meeting at 12:08:16 PM and reconvened at 1:00:43 PM.

**Commissioner Doth was absent from the meeting.**

Chair Powell recessed the Regular Meeting and convened the Public Hearing at 1:02:19 PM.

**22. 1:00 P.M.: Public Hearing to consider the following Ordinance:**

**Lincoln County Ordinance No. 2014-07 – An ordinance Providing for the Efficient and Sanitary Collection of Solid Waste in Lincoln County; Providing for Mandatory Disposal and Assessment of Fees; Providing a Penalty for Violation of the Ordinance; and Repealing Ordinance 2008-07**

Attorney Morel stated revisions were required to the Ordinance based on the County's prior decision to assume the billing of solid waste collection fees for County residents and the termination of the 1992 Joint Powers Agreement with GSWA.

Attorney Morel presented various revisions to reflect a past name change from Lincoln County Solid Waste to Greentree Solid Waste Authority and to define the "unincorporated areas of Lincoln County".

Attorney Morel requested guidance on the determination of who to bill for services and whether there should be a distinction between vacant lots, occupied or unoccupied structures, or whether billing should be tied to an electric service. Ms. Taylor commented on the potential use of records maintained by the Assessor for current billing practices.

Paul Baca, Assessor informed all parcels were coded according to whether the parcel was vacant, residential, non-residential, commercial, or other various scenarios. Mr. Baca expressed belief it was not the duty of the Assessor to determine if any particular structure was considered "livable or not livable". Mr. Baca also commented on frequent complaints received from the general public about being billed for annual services when services were only utilized part time.

Attorney Morel stated from the viewpoint of providing access to a particular service it was appropriate to bill for services annually regardless of how often the residence was occupied.

There was a general discussion about options for billing and also for setting rates and fees.

Ms. Taylor commented on the difficulty of setting rates without knowing the total cost of services. Ms. Taylor stated when establishing a definition for premises to be billed the County needed to consider the duty of enforcement.

Attorney Morel suggested for commercial billing purposes a base rate be set and then each particular circumstance be evaluated. Attorney Morel also noted a need to define "special services".

There was a general consensus to adopt a definition of "premises" for billing purposes as "every dwelling, business, plant, building, or any activity which causes or creates refuse on its premises outside of the unincorporated areas of the County". Attorney Morel reminded the County could not clearly determine the financial impact of any such definition due to the lack of information from GSWA.

There was a general consensus to follow current Assessor coding guidelines for billing purposes. There was general agreement solid waste billing would reflect any changes by the Assessor to property codes such as from residential to a nonresidential.

Attorney Morel suggested additional language changes to provide the County the flexibility to contract for collection services in the unincorporated areas of the County but noted the only intent at this time was to assume the billing responsibilities.

Commissioner Minter suggested adding language to clarify the withdrawal of any new "district" from the joint agreement would obligate that "district" to assume a portion of any debt. Attorney Morel stated this was the subject of current litigation and recommended no changes at this time.

Nita Taylor, County Manager discussed the lack of an adequate inventory of collection containers distributed by GSWA and the need for such inventory for billing purposes. Attorney Morel suggested retaining the current Ordinance language to provide both the County and GSWA responsibility for inventory.

Chair Powell requested comments from the public and receiving none, adjourned the Public Hearing at 1:49:45 PM.

**Motion:** Adopt Lincoln County Ordinance 2014-07 as amended and presented, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Draper.

Commissioner Minter objected to the motion based on belief GSWA did not have an opportunity to provide input.

**Vote:** Motion carried by roll call vote (summary: Yes = 3, No = 1, Abstain = 0).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Stone.

**No:** Commissioner Minter.

**Absent:** Commissioner Doth.

**SEE EXHIBIT E:** Copy of Lincoln County Ordinance 2014-7 is attached hereto in reference thereto made a part hereof.

**27. Request by Private Citizen to Lease Portion of County Owned Property (former Lincoln County Abstract & Title Co. building) for one year period of time.**

Ms. Taylor presented a request from Ms. Cecilia Grimes to lease a portion of the County owned property formerly known as the Lincoln County Abstract & Title Co. building for one year.

Commissioner Draper suggested the item be tabled pending the swearing in of the newly elected Commissioners and the need to consider other issues related to requests for space for relocation of the District Attorney and other County offices.

**Motion:** Table request from Ms. Grimes to lease County property, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stone.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

Commissioner Stone requested the item be placed on the January agenda for reconsideration.

**21. Water issues/Forest/Wildlife Health Programs/Land and Natural Resources Advisory Committee (LANRAC)**

**Water Rights Notices:** No new water rights notices were posted to State Engineer's website for new applications for water transfers. Ms. Taylor stated two applications were filed with the State Engineer's Office and published in the Lincoln County News. Ms. Taylor stated both applications were for transfers from a site below Ruidoso Downs to the Village of Ruidoso and both requested Emergency Authorization. Ms. Taylor reminded of a prior discussion between herself, Chair Powell, and the State Engineer Scott Verhines during which the State Engineer made a commitment to deny all requests for "Emergency Authorizations". Ms. Taylor provided copy of correspondence from Chair Powell to the State Engineer Verhines reminding him of his commitment.

**Lincoln County and Its Long Term Commitment to Forest/Watershed Restoration:** Ms. Taylor reminded Dr. Brent Racher of the New Mexico Forest Industry Association made a presentation during the July Regular Commission Meeting seeking a long-term commitment by the County to achieve watershed restoration at an accelerated pace. Ms. Taylor informed the first workshop for potential stakeholders was scheduled for November 21, 2014 at the County's Emergency Operations Center.

**Hazard Mitigation Grant Program:** Ms. Taylor reported on various public activities associated with the Lincoln County Education and Outreach Program funded by FEMA Grant 4079-DR-NM through a sub-grant agreement with New Mexico Department of Homeland Security and Emergency Management in the amount of \$157,333. Ms. Taylor noted this effort was a precursor to the larger project tied to the FEMA \$3,500,000 grant for the actual thinning of trees.

Chair Powell informed the last day to protest the applications for Emergency Authorizations was November 17, 2014. Chair Powell stated the State Engineer had previously publicly stated he would no longer approve "Emergency Authorizations". Chair Powell stated actions taken under "Emergency Authorization" discounted the constitutional rights of other water right holders.

Chair Powell commended Village Councilors John Cornelius, Joe Eby, and Lynn Crawford for attending a tour of the watershed to view actual conditions. Chair Powell discussed the historic sale of water rights from the Bonito Valley. Chair Powell stated as a result of the Little Bear Fire surface water was available from the Bonito but due to the sale of water rights no one in Lincoln County had access to the water. Chair Powell suggested the County learn from this historic lesson and not let the same situation occur in the Hondo Valley.

Commissioner Stone questioned if the County had standing to protest these actions as not qualifying for Emergency Authorization. Attorney Morel opined the County had the authority but noted the comment period on these particular applications had already expired. Commissioner Stone suggested the County seek representation for these issues during the legislative session.

### **23. Job Title Change – Sheriff's Department**

Ms. Taylor stated Sheriff Robert Shepperd requested a job title change for a currently vacant part time position from "Dispatcher" to "Secretary". Ms. Taylor stated funding for the position was included in the budget and noted the change would carry a reduction in pay from \$15.00 per hour to \$12.92 per hour.

**Motion:** Approve the part time job title change from Dispatcher to Secretary for the Sheriff's department, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Minter.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

### **24. Job Type Change – Office of Emergency Services**

Ms. Taylor reminded the Office of Emergency Services requested approval of a new seasonal firefighter position. Ms. Taylor stated the new position was approved with the stipulation to hire a contract employee. Ms. Taylor's research of the County's Personnel Policy and Procedures Ordinance revealed a contract employee could not utilize County vehicles or equipment. Ms. Taylor stated based on these limitations OES requested the position be redefined as a seasonal employee. Ms. Taylor stated the change from "contract" to "seasonal" would not alter the associated budgeted expense.

Ms. Taylor stated the OES further recommended a change in the definition of "seasonal" employee in the Ordinance to allow flexibility to employ an individual for "a period not to exceed six months in a fiscal year" rather than a "twelve month period". Ms. Taylor stated this change would require a Public Hearing to revise the Ordinance.

**Motion:** Approve the job description change from contract employee to seasonal employee,

**Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

### **25. Job Level/Grade Changes – Recommendations of the Compensation Advisory Board for Sheriff's Dept., Treasurer's Dept., Assessor's Dept., Clerk's Dept., and Manager's Offices**

Ms. Taylor presented recommendations from the Compensation Advisory Board pay grade adjustments for eighteen different job descriptions. Ms. Taylor reminded the Board of Commissioners directed the Compensation Advisory Board to review all titles after initial recommendations were presented in May of 2014.

Rhonda Burrows, Clerk speaking as a member of the Compensation Advisory Board discussed the Board's process and reminded this was an initial step to completely revise the Pay/Grade structure for the County.

There was general discussion about the proposed pay grade changes and the recommendation to change the Road Superintendent position from a Grade 30 hourly wage to an annual salary. Ms. Taylor recommend the position be considered classified. Commissioner Minter questioned if a salaried employee was not "unclassified" by definition. Attorney Morel suggested he review the statutory definition. Ms. Taylor requested approval of the recommendation to redefine the Road Superintendent position as salaried with clarification of the status of classified or unclassified after Attorney Morel's research.

**Motion:** Approve the pay grade changes for 18 titles to levels recommended by the Compensation Advisory Board effective December 6, 2014; the change in title from Road Department Secretary to Road Department Administrative Assistant; and the change in classification for Road Superintendent from hourly wage to salaried at the transition level of \$55,000 with classification status pending Attorney's analysis, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Draper.

**Vote:** Motion passed (summary: Yes = 3, No = 1, Abstain = 0).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter.

**No:** Commissioner Stone.

**Absent:** Commissioner Doth.

**Motion:** Approve a new Operator IV Grade 20 Road Department position, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Stone.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

**26. Issuance of Quit Claim Deed to Steve Morgan for Road Vacated by the County But Never Deeded**

Attorney Morel presented the history of the prior vacation of portion of Delana Drive in April of 1996. Attorney Morel stated in the past when the County vacated land it was simply vacated and not transferred or deeded to an individual owner. Attorney Morel stated after adoption of an Ordinance in compliance with the anti-donation clause, a process was created whereby a landowner could purchase vacated land from the County for the fair market value as determined by the Assessor.

Attorney Morel presented a deed for "a portion of vacated Delana Drive adjoining Lots 33, 34, and 35 of Block 16 Paradise Canyon Subdivision" to transfer ownership to the original applicant Clyde Steve Morgan.

**Motion:** Approve the transfer of ownership of a portion of Delana Drive to Clyde Steve Morgan conditional upon payment and receipt of current assessed value to the County of Lincoln, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Stone.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

**28. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinance**

The Manager requested a Public Hearing to consider revisions to current personnel policies and procedures as defined by Ordinance 2014-01.

The Manager requested a Public Hearing to set and approve solid waste collection rates as required by Resolution 2008-42.

**Motion:** Schedule Public Hearings to consider Ordinance 2014-01 and Resolution 2008-42 for the December 16, 2014 Regular Commission Meeting, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Minter.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

**29. Consideration of Appointments and Removals from Boards /Commissioners /Committees:**

a. **Tabled-Senior Citizens Olympic Committee**

**30. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).**

**Motion:** To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

New or Updated Matters since last report \*

1. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-200701364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 18, 2013, and Conclusion of Law/Order was filed May 15, 2014 entered in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014.
2. *Michael Wheaton v Paul F. Baca, Lincoln County Assessor, et. al.* D-1226-CV-2011-00341. Suit filed October 18, 2011. Stipulated Notice of Dismissal with Prejudice was filed with the court Sept. 15, 2014.
3. *Coble Constructors, LLC, et al v Carl Kelley Construction Ltd. Co, et al.* D-1226-CV-2012-00003. Suit filed January 15, 2012. Complaint to Foreclose Mechanic's Lien. Motion for Summary Judgment filed Jan. 29, 2014. Motion for Grant of Summary Judgment filed July 18, 2014. Hearing scheduled for Jan. 5, 2015.
- \*4. *Greentree Solid Waste Authority v. Lincoln County* D-1226-CV-2014-00095. Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction, Motion to Waive Time to Reassign District Judge (Judge Karen Parsons was disqualified). County was served May 14, 2014. Mr. Paul Melendres has been retained by the County and filed Answer, Motion to Disqualify Mr. Beauvais and Change of Venue. Motion to Join the New Mexico Finance Authority as an Indispensable Party filed July 22, 2014. GSWA filed its Motion for Summary Judgment on Sept. 26, 2014. County filed its Response to GSWA's Motion for Summary Judgment on Oct. 13, 2014. Scheduling Conference and Hearing on All Pending Motions is scheduled Nov. 20 both with Judge Ritter. Preliminary Injunction Hearing is scheduled Dec. 17, 2014 with Judge Ritter.
- \*5. *Greentree Solid Waste Authority v. Lincoln County, et. al.* D-0101-CV-2013-00104. Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. GSWA's Brief in Chief filed Sept. 9, 2014. Record Proper was filed Sept. 25, 2014. Alto Lakes Water and Sanitation District's and Lincoln County's Joint Response Brief was filed with the Court of Appeals Oct. 24, 2014.
- \*6. *Rio Grande-Alameda, Ltd. v Paul Baca, Lincoln County Assessor* D-1226-CV-2013-00005. Suit filed January 9, 2013. Complaint for Refund of Taxes Paid. Defendant's first motion to dismiss or Summary Judgment filed August 29, 2013. Hearing was Jan. 6, 2014, and produced an Order of Dismissal, with a Motion to Reconsider filed Jan. 8, 2014. Hearing on the Merits occurred May 12, 2014 in Carrizozo with Judge Parsons and produced an Order Granting Motion to Dismiss. Appeal was filed Aug. 4, 2014. Settlement has been negotiated.
7. *Barbara Diane Latham, et al v. Neal Cox, Ben Hazen, Lincoln County Sheriff's Department and the County of Lincoln.* D-1226-CV-2013-00191 to Federal No: 2:13-CV-00822-RB-SMV. Suit filed July 19, 2013. Complaint for Violation of Civil Rights, Wrongful Death and Damages by Attorney Gary Mitchell. Tort Claim Notice was filed on October 27, 2011. LCSO and LC Manager were served on August 5, 2013. Advised NMAC assigned the case to Brennan and Sullivan Law Firm Sept. 5, 2013. Case was moved to Federal Court August 30, 2013. Plaintiffs and Defendants Agreed Motion to Modify Scheduling Order filed Aug. 5, 2014. Motion for Qualified Immunity still pending as of Oct. 4, 2014. Ms. Latham filed a new action in federal court against Village of Capitan and Police Officer Kevin Kennedy filed July 25, 2014. The court Sua Sponte consolidated both cases via Order from Judge Brack filed Sept. 29, 2014.
8. *State of NM/Lincoln County v. Avalon-Construction, Ruidoso, NM* D-1226-CV 2014-00006 Filed Jan. 6, 2014 Open complaint for Refund of Taxes paid. Case assigned to Basham & Basham/Dwyer. Motion to Dismiss filed July 17, 2014. Settlement Agreement was signed by Avalon Sept. 3, 2014 and by Lincoln County Sept. 8, 2014.
- \*9. *Bank of America, N.A. v. Howard D. Schafer, et. al. (County of Lincoln through LCSWA)* D-1226-CV2014-00162 County was served Sept. 2, 2014. Complaint for Foreclosure filed Aug. 19, 2014 Lincoln County filed an Alarm Ordinance Lien and a LCSWA Lien. Mr. Morel entered his appearance on behalf of the County Sept. 23, 2014. Disclaimer of Interest has been filed.
- \*10. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.* Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 et. al. and H-272 et



al (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.

#### **Tort Claims Notices Received or Threatened**

##### **2014**

**Ramos, Aaron** – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

**Millerden, Kenneth and Anita** – Tort Claim Notice received May 9, 2014 alleging negligence from staff at Lincoln County Medical Center during prepartum care for their infant son.

**Ogden, John D** – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at LCDC on March 11, 2014.

**Rounds, Christopher** – Tort Claim Notice received June 4, 2014 alleging being held in LCDC without being advised of his charges.

**Herbert, Crystal** – Tort Claim Notice received June 23, 2014 alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

**Class Action** – Tort Claim Notice received June 23, 2014 alleging false imprisonment, false arrest, deprivation of rights at LCDC that arise with Immigration and Customs Enforcement charges.

**Atwell, Stacey** – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

**McGarry, Sean** – Tort Claim Notice received July 25, 2014 alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitan Police Department.

**Ramos, Aaron** – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at LCDC.

**Lambert, David and Bonnie** - Tort Claim Notice received Sept. 8, 2014 by attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

**\*Rider, Edward Allen and Moorhead, Brennon** – Tort Claim Notice received Oct. 20, 2014 by attorney W. Chris Nedbalek alleging Lincoln County Narcotics Enforcement Unit officers destroyed items in a home.

**\*Caughron, Brittany and Anderson, Amie** – Tort Claim Notice received Oct. 24, 2014 by attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8<sup>th</sup> Amendment Rights.

**\*Ryen, Allen** - Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

**\*Inmate Group** – Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

**\*McMurray, Cody** – Tort Claim Notice received Nov. 6, 2014 by attorney W. Chris Nedbalek alleging lack of adequate medical care at Lincoln County Detention Center

##### **2013**

**Allen, Katherine Elizabeth**- Notice of Tort Claim against Lincoln County Detention Center for alleged injuries sustained during transport.

**Borrego, Albert** - Tort Claim Notice received from attorney Gary Mitchell on June 14, 2013, alleging continued harassment to Albert G. Borrego by police while responding to a noise complaint at Mr. Borrego's residence on February 28, 2013, and a separate incident resulting in Mr. Borrego's arrest on March 5, 2013, due to an outstanding warrant, during which Mr. Borrego allegedly sustained injuries while in custody due to an existing broken back injury. Claim has been denied by NMAC.

**Espinoza, Robert** Tort Claim Notice received from Robert Espinoza on June 4, 2013, alleging property damage from vehicle accident while Linda Mullins, driving the LC Senior Center meal delivery van ran off road hitting chain link fence, poles and railroad ties.

**Harrisburg Documents**- Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

**Montoya, Emilia L.** - Tort Claim Notice received by attorney Freda Howard McSwane on April 23, 2013, alleging injuries sustained by Ms. Montoya when a physical altercation took place at the LCDC.

**Ramos, Aaron** - Tort Claim Notice received by attorney Robert J. Beauvais on April 18, 2013, (correspondence dated September 13, 2011) alleging concerns about Mr. Ramos' safety



and welfare and violation of his U.S. Constitutional rights.

**Silva, Elmo** Tort Claim Notice received from attorney Richard Marquez November 6, 2013. Alleges false imprisonment for Mr. Silva, who was sentenced in the 12<sup>th</sup> Judicial District Court to 38 years filed on July 3, 1990.

**Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Chair Powell.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 4).

**Yes:** Chair Powell, Commissioner Draper, Commissioner Minter, Commissioner Stone.

**Absent:** Commissioner Doth.

Chair Powell recessed the Regular Meeting and convened the Closed Session at 3:15:45 PM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 5:01:25 PM.

Commissioner Stone attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

**21. Water Rights Notice (continued)**

**Motion:** Approve the filing of protests for water rights transfers under Emergency Authorization for Applications SD-08-25-21 into SD-0275-1 and H-272 et al; and Application SD-0811-3 into SD-0275-1 and H-272 et al; and the hiring of Attorney Kelly Cassels to enter legal appearance in this matter, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Stone.

**Vote:** Motion passed (**summary:** Yes = 2, No = 1, Abstain = 0).

**Yes:** Chair Powell, Commissioner Stone.

**No:** Commissioner Draper.

**Absent:** Commissioner Doth, Commissioner Minter.

**31. Signing of Official Documents**


**32. Next meetings:**

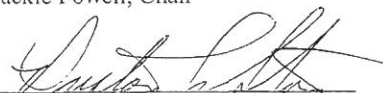
- a. December 16, 2014 Regular Commission Meeting

**33. Adjourn**


There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 5:03:42 PM.

County of Lincoln  
Board of County Commissioners

  
\_\_\_\_\_  
Jackie Powell, Chair

  
\_\_\_\_\_  
Preston Stone, Vice Chair

  
\_\_\_\_\_  
Mark Doth, Member

  
\_\_\_\_\_  
Dallas Draper, Member

\_\_\_\_\_  
Kathryn Minter, Member



ATTEST:

  
\_\_\_\_\_  
Rhonda Burrows, County Clerk

December 16, 2014  
Date Approved